



COMMONWEALTH of VIRGINIA

Office of the Attorney General

Robert F. McDonnell
Attorney General

900 East Main Street
Richmond, Virginia 23219
804-786-2071
FAX 804-786-1991
Virginia Relay Services
800-828-1120
7-1-1

MEMORANDUM

TO: L. RICHARD MARTIN, JR.
Virginia Department of Social Services

FROM: ALLEN T. WILSON
Assistant Attorney General

DATE: October 27, 2006

SUBJECT: Repeal of Regulation 22 VAC 40-71-10 et seq.
Standards and Regulations for Licensed Assisted Living Facilities
Final Regulation 22 VAC 40-72-10 et seq.
Standards for Licensed Assisted Living Facilities

I have reviewed the proposed repeal of 22 VAC 40-71-10 et seq., Standards and Regulations for Licensed Assisted Living Facilities. I also have reviewed the final regulation, 22 VAC 40-72-10 et seq., Standards for Licensed Assisted Living Facilities which is being proposed to replace 22 VAC 40-71-10 et seq. I have reviewed these actions to determine if the changes made to the proposed regulation exceed the statutory authority of the State Board of Social Services ("State Board").

As Usha Koduru noted in her memoranda dated August 23, 2005, it is this Office's view that the State Board has the authority to repeal 22 VAC 40-71-10 et seq. and promulgate its replacement, 22 VAC 40-72-10 et seq., subject to compliance with the provisions of Article 2 of the Administrative Process Act and Executive Order 21 (2002)(rescinded and replaced by Executive Order 36 (2006)), and has not exceeded that authority.

It appears that several changes to the final regulation are not changes with "substantial impact," and, therefore do not necessitate an additional comment period. Those changes are merely technical in nature or clarify the language in the regulation.

It also appears that there are a number of changes that constitute changes with "substantial impact," and could necessitate an additional comment period. Please note that Va. Code § 2.2-4013(B) requires that all changes to the proposed regulations be highlighted in the final regulations, and it appears that this requirement

has been fulfilled. Also, pursuant to § 2.2-4013(C), if the Governor finds that one or more changes with substantial impact have been made to the proposed regulation, he *may* (but is not required to) direct DSS to provide an additional thirty days to solicit additional public comment on the changes. In addition, Va. Code § 2.2-4007(K) requires the agency to solicit additional public comment, *if* it receives requests from at least twenty-five persons for an opportunity to submit oral and written comments on the changes to the regulation and if one or more changes with substantial impact were made to the proposed regulation.

If you have any questions, please feel free to call me at 786-0095.